

304.49-060 Incorporation of captive insurers -- Form of special captive insurer, agency captive insurer, and risk retention group -- Conditions for issuing certificate of authority -- Applicability of KRS Chapter 271B and Subtitles 27 and 45 -- Conflicts.

- (1) A pure captive insurer or a sponsored captive insurer shall be incorporated as a stock insurer with its capital divided into shares and held by the stockholders.
- (2) A consortium captive insurer or an industrial insured captive insurer may be:
 - (a) Incorporated as a stock insurer with its capital divided into shares and held by the stockholders; or
 - (b) Incorporated as a mutual insurer without capital stock, the governing body of which is elected by the member organizations of its consortium; or
 - (c) Organized as a reciprocal insurer in accordance with Subtitle 27 of this chapter.
- (3) A special purpose captive insurer may be:
 - (a) Incorporated as a stock corporation;
 - (b) Incorporated as a nonstock corporation;
 - (c) Formed as a limited liability company;
 - (d) Formed as a partnership;
 - (e) Formed as a limited partnership;
 - (f) Formed as a statutory trust; or
 - (g) Such other person approved by the executive director, other than a natural person in his or her individual capacity.
- (4) A sponsored captive insurer may be:
 - (a) Incorporated as a stock corporation;
 - (b) Incorporated as a nonstock corporation;
 - (c) Formed as a limited liability company;
 - (d) Formed as a partnership;
 - (e) Formed as a limited partnership; or
 - (f) Formed as a statutory trust.
- (5) A risk retention group may take any form permitted under the Liability Risk Retention Act of 1986, 15 U.S.C. sec. 3901 et seq., as amended.
- (6) A captive insurer incorporated or organized in Kentucky shall have not less than three (3) incorporators or two (2) organizers.
- (7) In the case of a captive insurer, the executive director shall find, in order to issue a certificate of authority, that the establishment and maintenance of the proposed captive insurer will promote the general good of the state. In arriving at such a finding, the executive director shall consider:
 - (a) The character, reputation, financial standing, and purposes of the incorporators or organizers;

- (b) The character, reputation, financial responsibility, insurance experience, and business qualifications of the persons responsible for the conduct of the captive insurer's affairs; and
 - (c) Any other aspects the executive director deems advisable.
- (8) The capital stock of a captive insurer incorporated as a stock insurer may be authorized with no par value.
- (9) Captive insurance companies formed as corporations under the provisions of KRS 304.49-010 to 304.49-230 shall have the privileges and be subject to the provisions of KRS Chapter 271B as well as the applicable provisions contained in KRS 304.49-010 to 304.49-230. If there is a conflict between the provisions of KRS Chapter 271B and the provisions of this chapter, the latter shall control. The provisions of this chapter, pertaining to mergers, consolidations, conversions, mutualizations, and redomestications, shall apply in determining the procedures to be followed by captive insurance companies in carrying out any of the transactions described therein, except that:
 - (a) The executive director may, upon request of an insurer party to a merger authorized under this subsection, waive the requirement of KRS 304.24-390(4); and
 - (b) The executive director may waive or modify the requirements for public notice and hearing in accordance with rules which the executive director may adopt addressing categories of transactions. If a notice of public hearing is required, but no one requests a hearing, then the executive director may cancel the hearing.
- (10) Captive insurance companies formed as reciprocal insurers under the provisions of KRS 304.49-010 to 304.49-230 shall have the privileges and be subject to the provisions of Subtitle 27 of this chapter in addition to the applicable provisions of this subtitle. In the event of a conflict between the provisions of Subtitle 27 of this chapter and the provisions of this subtitle, the latter shall control. To the extent a reciprocal insurer is made subject to other provisions of this subtitle pursuant to Subtitle 27 of this chapter, those provisions shall not be applicable to a reciprocal insurer formed under KRS 304.49-010 to 304.49-230 unless the provisions are expressly made applicable to captive insurance companies under KRS 304.49-010 to 304.49-230.
- (11) In addition to the provisions of subsection (10) of this section, captive insurance companies organized as reciprocal insurers that are industrial insured groups as defined in this subtitle shall have the privileges and be subject to the provisions of Subtitle 45 of this chapter, in addition to the applicable provisions of this subtitle.
- (12) The articles of incorporation or bylaws of a captive insurer formed as a corporation may authorize a quorum of a board of directors to consist of no fewer than one-third (1/3) of the fixed or prescribed number of directors.
- (13) The subscribers' agreement or other organizing document of a captive insurer formed as a reciprocal insurer may authorize a quorum of a subscribers' advisory committee to consist of no fewer than one-third (1/3) of the number of its members.

(14) Each owner of an agency captive insurer shall be licensed as an insurance producer.

Effective: April 25, 2006

History: Amended 2006 Ky. Acts ch. 252, Pt. XXXIV, sec. 8, effective April 25, 2006.

-- Created 2000 Ky. Acts ch. 434, sec. 6, effective July 14, 2000.

Legislative Research Commission Note (6/20/2005). 2005 Ky. Acts chs. 11, 85, 95, 97, 98, 99, 123, and 181 instruct the Reviser of Statutes to correct statutory references to agencies and officers whose names have been changed in 2005 legislation confirming the reorganization of the executive branch. Such a correction has been made in this section.